

AMENDED IN ASSEMBLY MAY 27, 2011  
AMENDED IN ASSEMBLY MARCH 31, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 639**

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**Introduced by Assembly Member Norby**

February 16, 2011

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An act to amend Sections 11471, ~~11489~~, and 11495 of, and to add Section 11471.2 to, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 639, as amended, Norby. Controlled substances.

Existing law provides that in all cases where property used or intended to be used to facilitate any violation of specified controlled substance offenses is seized and forfeited to a state or local governmental entity and, where necessary, sold, the moneys forfeited or the proceeds of sale shall be distributed by the state or local governmental entity to specified persons or entities for specified purposes, including for the purpose of combating drug abuse.

Existing law, the Uniform Controlled Substances Act, includes provisions authorizing the seizure and forfeiture of property involved in, or purchased with the proceeds from, a controlled substance offense.

This bill would provide that property is deemed to be seized whenever any agency takes possession or control of it. The bill would add provisions that provide that seizing agencies or prosecuting attorneys authorized to bring civil forfeiture proceedings shall not directly or indirectly transfer seized property, including any property seized by state or local law enforcement officers who are detached to, deputized

or commissioned by, or working in conjunction with, a federal agency to any federal agency or any governmental entity not created under and subject to state law, unless the court enters an order, as specified, authorizing the property to be transferred. The bill would provide that where a state or local agency transfers seized property to any federal agency for forfeiture in violation of these provisions, the state or local agency shall be liable to the state in an action brought by the Attorney General for 24% of the proceeds received by the state or local agency from the federal government and would provide that the funds would be required to be deposited in the General Fund for expenditure, upon appropriation by the Legislature, for drug prevention and treatment services.

~~Existing law provides that a specified amount shall be deposited to the General Fund, and that commencing January 1, 1995, all moneys so deposited, in an amount not to exceed \$10,000,000, shall be made available for school safety and security, upon appropriation by the Legislature, and shall be disbursed, as specified.~~

~~This bill would instead provide that a specified amount shall be deposited to the General Fund, and that commencing January 1, 2012, all moneys so deposited shall be made available for drug prevention and treatment services, upon appropriation by the Legislature.~~

Existing law provides that each year the Attorney General shall publish a report that sets forth specified information regarding forfeiture actions.

This bill would provide that the report shall be published in book form and made publicly accessible by electronic means, if feasible, and shall include other specified information.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11471 of the Health and Safety Code is
- 2 amended to read:
- 3 11471. Property is deemed to be seized whenever any agency
- 4 takes possession or control of it. Property subject to forfeiture
- 5 under this division may be seized by any peace officer upon process
- 6 issued by any court having jurisdiction over the property. Seizure
- 7 without process may be made if any of the following situations
- 8 exist:

1 (a) The seizure is incident to an arrest or a search under a search  
2 warrant.

3 (b) The property subject to seizure has been the subject of a  
4 prior judgment in favor of the state in a criminal injunction or  
5 forfeiture proceeding based upon this division.

6 (c) There is probable cause to believe that the property is directly  
7 or indirectly dangerous to health or safety.

8 (d) There is probable cause to believe that the property was used  
9 or is intended to be used in violation of this division.

10 (e) Real property subject to forfeiture may not be seized, absent  
11 exigent circumstances, without notice to the interested parties and  
12 a hearing to determine that seizure is necessary to preserve the  
13 property pending the outcome of the proceedings. At the hearing,  
14 the prosecution shall bear the burden of establishing that probable  
15 cause exists for the forfeiture of the property and that seizure is  
16 necessary to preserve the property pending the outcome of the  
17 forfeiture proceedings. The court may issue seizure orders pursuant  
18 to this section if it finds that seizure is warranted or pendente lite  
19 orders pursuant to Section 11492 if it finds that the status quo or  
20 value of the property can be preserved without seizure.

21 (f) Where business records are seized in conjunction with the  
22 seizure of property subject to forfeiture, the seizing agency shall,  
23 upon request, provide copies of the records to the person, persons,  
24 or business entity from whom the records were seized.

25 SECTION 1. Section 11471.2 is added to the Health and Safety  
26 Code, to read:

27 11471.2. (a) Any property seized by state or local law  
28 enforcement officers who are detached to, deputized or  
29 commissioned by, or working in conjunction with, a federal agency  
30 shall remain subject to the provisions of this section.

31 (b) (1) Seizing agencies or prosecuting attorneys authorized to  
32 bring civil forfeiture proceedings under this chapter shall not  
33 directly or indirectly transfer seized property to any federal agency  
34 or any governmental entity not created under and subject to state  
35 law, unless the court enters an order, upon petition of the  
36 prosecuting attorney, authorizing the property to be transferred.

37 (2) Where a state or local agency transfers seized property to  
38 any federal agency for forfeiture, directly or indirectly, in violation  
39 of this subdivision, the state or local agency shall be liable to the  
40 state in any action brought by the Attorney General in an amount

1 equal to 24 percent of the proceeds received by the state or local  
2 agency from the federal agency. Moneys awarded in the action  
3 shall be deposited in the General Fund for allocation pursuant to  
4 subparagraph (C) of paragraph (2) of subdivision (b) of Section  
5 11489 of the Health and Safety Code. The Attorney General may  
6 recover the cost of suit in this type of action.

7 (c) The court may not enter an order authorizing a transfer unless  
8 one of the following conditions exists:

9 (1) It reasonably appears that the activity giving rise to the  
10 investigation or seizure is interstate in nature and sufficiently  
11 complex to justify a transfer.

12 (2) The seized property may only be forfeited under federal law.

13 (3) Pursuing forfeiture under state law would unduly burden  
14 prosecuting attorneys or state law enforcement agencies.

15 (d) Prior to entering any order to transfer property pursuant to  
16 this section, the court shall provide the owner of the property a  
17 right to be heard with respect to that transfer.

18 ~~SEC. 2. Section 11489 of the Health and Safety Code is~~  
19 ~~amended to read:~~

20 ~~11489. Notwithstanding Section 11502 and except as otherwise~~  
21 ~~provided in Section 11473, in all cases where the property is seized~~  
22 ~~pursuant to this chapter and forfeited to the state or local~~  
23 ~~governmental entity and, where necessary, sold by the Department~~  
24 ~~of General Services or local governmental entity, the money~~  
25 ~~forfeited or the proceeds of sale shall be distributed by the state~~  
26 ~~or local governmental entity as follows:~~

27 ~~(a) To the bona fide or innocent purchaser, conditional sales~~  
28 ~~vendor, or mortgagee of the property, if any, up to the amount of~~  
29 ~~his or her interest in the property, when the court declaring the~~  
30 ~~forfeiture orders a distribution to that person.~~

31 ~~(b) The balance, if any, to accumulate, and to be distributed and~~  
32 ~~transferred quarterly in the following manner:~~

33 ~~(1) To the state agency or local governmental entity for all~~  
34 ~~expenditures made or incurred by it in connection with the sale of~~  
35 ~~the property, including expenditures for any necessary costs of~~  
36 ~~notice required by Section 11488.4, and for any necessary repairs,~~  
37 ~~storage, or transportation of any property seized under this chapter.~~

38 ~~(2) The remaining funds shall be distributed as follows:~~

1     ~~(A) Sixty-five percent to the state, local, or state and local law~~  
2     ~~enforcement entities that participated in the seizure distributed so~~  
3     ~~as to reflect the proportionate contribution of each agency.~~

4     ~~(i) Fifteen percent of the funds distributed pursuant to this~~  
5     ~~subparagraph shall be deposited in a special fund maintained by~~  
6     ~~the county, city, or city and county of any agency making the~~  
7     ~~seizure or seeking an order for forfeiture. This fund shall be used~~  
8     ~~for the sole purpose of funding programs designed to combat drug~~  
9     ~~abuse and divert gang activity, and shall wherever possible involve~~  
10    ~~educators, parents, community-based organizations and local~~  
11    ~~businesses, and uniformed law enforcement officers. Those~~  
12    ~~programs that have been evaluated as successful shall be given~~  
13    ~~priority. These funds shall not be used to supplant any state or~~  
14    ~~local funds that would, in the absence of this clause, otherwise be~~  
15    ~~made available to the programs.~~

16    ~~It is the intent of the Legislature to cause the development and~~  
17    ~~continuation of positive intervention programs for high-risk~~  
18    ~~elementary and secondary schoolage students. Local law~~  
19    ~~enforcement should work in partnership with state and local~~  
20    ~~agencies and the private sector in administering these programs.~~

21    ~~(ii) The actual distribution of funds set aside pursuant to clause~~  
22    ~~(i) is to be determined by a panel consisting of the sheriff of the~~  
23    ~~county, a police chief selected by the other chiefs in the county,~~  
24    ~~and the district attorney and the chief probation officer of the~~  
25    ~~county.~~

26    ~~(B) Ten percent to the prosecutorial agency which processes~~  
27    ~~the forfeiture action.~~

28    ~~(C) Twenty-four percent to the General Fund. Notwithstanding~~  
29    ~~Section 13340 of the Government Code, the moneys are hereby~~  
30    ~~continuously appropriated to the General Fund. Commencing~~  
31    ~~January 1, 2012, all moneys deposited in the General Fund pursuant~~  
32    ~~to this subparagraph shall be made available for drug prevention~~  
33    ~~and treatment services, upon appropriation by the Legislature.~~

34    ~~(D) One percent to a private nonprofit organization composed~~  
35    ~~of local prosecutors which shall use these funds for the exclusive~~  
36    ~~purpose of providing a statewide program of education and training~~  
37    ~~for prosecutors and law enforcement officers in ethics and the~~  
38    ~~proper use of laws permitting the seizure and forfeiture of assets~~  
39    ~~under this chapter.~~

~~(e) (1) Notwithstanding Item 0820-101-469 of the Budget Act of 1985 (Chapter 111 of the Statutes of 1985), all funds allocated to the Department of Justice pursuant to subparagraph (A) of paragraph (2) of subdivision (b) shall be deposited into the Department of Justice Special Deposit Fund—State Asset Forfeiture Account and used for the law enforcement efforts of the state or for state or local law enforcement efforts pursuant to Section 11493.~~

~~(2) All funds allocated to the Department of Justice by the federal government under its Federal Asset Forfeiture program authorized by the Comprehensive Crime Control Act of 1984 may be deposited directly into the Narcotics Assistance and Relinquishment by Criminal Offender Fund and used for state and local law enforcement efforts pursuant to Section 11493.~~

~~(3) Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund—Federal Asset Forfeiture Account.~~

~~(d) (1) All the funds distributed to the state or local governmental entity pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (b) shall not supplant any state or local funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of these agencies.~~

~~(2) The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in this section.~~

~~(3) For the purposes of this section, “local governmental entity” means any city, county, or city and county in this state.~~

~~SEC. 3.~~

*SEC. 2.* Section 11495 of the Health and Safety Code is amended to read:

11495. (a) The funds received by the law enforcement agencies under Section 11489 shall be deposited into an account maintained by the Controller, county auditor, or city treasurer. These funds shall be distributed to the law enforcement agencies at their request. The Controller, auditor, or treasurer shall maintain a record of these disbursements which records shall be open to public inspection, subject to the privileges contained in Sections 1040, 1041, and 1042 of the Evidence Code.

1 (b) Upon request of the governing body of the jurisdiction in  
2 which the distributions are made, the Controller, auditor, or  
3 treasurer shall conduct an audit of these funds and their use. In the  
4 case of the state, the governing body shall be the Legislature.

5 (c) Each year, the Attorney General shall publish a report, in  
6 book form and made publicly accessible by electronic means, if  
7 feasible, which sets forth the following information for the state,  
8 each county, each city, and each city and county:

9 (1) The number of forfeiture actions initiated.

10 (2) The number of cases and the administrative number or court  
11 docket number of each case for which forfeiture was ordered or  
12 declared.

13 (3) The value of the assets forfeited.

14 (4) The recipients of the forfeited assets, the amounts received,  
15 and the date of the disbursement.

16 ~~(5) A complete description by the recipients of forfeited assets~~  
17 ~~of the purposes for which all forfeited assets were designated or~~  
18 ~~used, and the dates of all disbursements for each purpose.~~

19 ~~(6)~~

20 (5) The number of forfeiture actions initiated under federal law  
21 in which a state or local agency had a role, and a description of  
22 the role served in each federal forfeiture action by each  
23 participating state or local agency. The description shall include,  
24 but not be limited to, the following information:

25 (A) The date of the seizure; the date of transfer of the case from  
26 state or local authorities to federal authorities, if applicable; and  
27 the date on which forfeiture was ordered or declared.

28 (B) The case number assigned to each federal forfeiture action  
29 by federal authorities, if known, ~~or, if the case number is not~~  
30 ~~known, other identifying information about the case.~~

31 (C) Whether the state or local agency originated information  
32 leading to a seizure or federal forfeiture action.

33 (D) Whether the state or local agency supplied unique or  
34 indispensable assistance to the federal forfeiture action, and a  
35 description of the assistance.

36 (E) The number of hours expended by the state or local agency  
37 on the case.

38 (F) Whether a federal agency has classified the federal forfeiture  
39 case as a “joint” seizure and forfeiture action, or as an “adoption”

- 1 by federal authorities of a case initiated by a state or local agency,  
2 if that federal classification is known.  
3 ~~(7)~~  
4 (6) The value of assets forfeited under federal law in each case  
5 in which a state or local agency had a role.  
6 ~~(8)~~  
7 (7) The value of all shares of assets forfeited under federal law  
8 that are returned to a state or local agency that had a role in the  
9 federal forfeiture action, and the date of receipt of the shares.  
10 ~~(9)~~  
11 (8) A complete description by state and local agencies that  
12 receive assets forfeited under federal law of the purposes for which  
13 all the forfeited assets were designated or used, and the dates of  
14 all disbursements for each purpose.  
15 (d) The Attorney General shall develop administrative guidelines  
16 for the collection and publication of the information required in  
17 subdivision (c).  
18 (e) The Attorney General's report shall cover the calendar year  
19 and shall be made no later than March 1 of each year beginning  
20 with the year after the enactment of this law, except that the portion  
21 of the report setting out the data and information required by  
22 paragraphs (5) to ~~(9)~~ (8), inclusive, of subdivision (c) shall be made  
23 no later than March 1, 2013, and by that day every year thereafter.